

afford to disregard his reputation, which would be injured by the libel suit. Nor is the radio station without an interest in the matter despite legal immunity. Its reputation would also be injured by an action brought against the speaker, and it may thus be expected to continue to exercise some precautions as to material it broadcasts. Thus it might well be that the station would continue to make use of its knowledge and experience, but as an adviser rather than as an arbiter.

If within the framework of Section 315 as presently in force a choice must be made between the two rules, the FCC's interpretation seems preferable. A balance must be struck between the goals of free speech and freedom from false and damaging utterances. In the medium of radio, and in the particular field of political broadcasts, the desirability of full and uncensored discussion seems paramount.

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STATE REGULATION OF CORPORATE PROCEDURE FOR ELECTING DIRECTORS*

WHILE ultimate control of a corporation theoretically rests in the owners of the voting stock,¹ it has long been recognized that the intimate contact of the directors with the corporate business and the proxy voting system may enable them to gain almost unrestricted control.² Even the cumulative

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* *Standard Power & Light Corp. v. Investment Associates, Inc.*, 51 A.2d 572 (Del. 1947).

1. Right to control has been held to be an "essential attribute of [stockholder's] property," *Lord v. Equitable Life Assur. Soc'y of United States*, 194 N.Y. 212, 229, 87 N.E. 443, 449 (1909); an inherent power, *Stoker v. Continental Trust Co. of City of New York*, 186 N.Y. 285, 297, 78 N.E. 1090, 1094 (1906); an inherent right, *Holcomb v. Forsyth*, 216 Ala. 486, 491, 113 So. 516, 521 (1927). The preeminence of the shareholders is exemplified by the common law proposition that if the directors or officers whose duty it is to call a shareholder meeting fail or refuse to issue the call, a stockholder may bring mandamus to force them to do so. *E.g.*, *State v. Wright*, 10 Nev. 167 (1875); *People v. Cummings*, 72 N.Y. 433 (1878); see 3 COOK, *A TREATISE ON THE LAW OF CORPORATIONS HAVING CAPITAL STOCK* §§ 593, 603 (8th ed. 1923); 2 THOMPSON, *COMMENTARIES ON THE LAW OF CORPORATIONS* § 1038 (3rd ed. 1927). But in 1932 only 22 of the 200 largest corporations in the United States were actually controlled by majority owners, BERLE AND MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* 94-6 (1932). See generally, Rhorlich, *Suits in Equity by Minority Stockholders as Means of Corporate Control*, 81 U. OF PA. L. REV. 629, 727 (1933); Rhorlich, *Corporate Voting: Majority Control*, 7 ST. JOHN'S L. REV. 218 (1933).

2. Such factors as widespread ownership, inertia and inaccessibility of meeting place have resulted in a decreased personal participation of the shareholder at shareholder meetings. See BERLE AND MEANS, *op. cit. supra* note 1, *passim*; DEWING, *THE FINANCIAL POLICY OF CORPORATIONS* 628 (1926).

voting privilege, designed to secure effective representation for outsider minorities, has been employed by the directors as a device for electing their own candidates.³ Moreover, especially in the large corporations, the stockholders may be both ignorant and apathetic as to the management of the business despite SEC requirements of notice in proxy statements.⁴ As a consequence, it is usually difficult for an insurgent element to convince more than a small percentage of stockholders to vote for a change in directors.

A factor directly affecting the comparative difficulty of electing new directors is necessarily the proportion of voting shares which the insurgent group is required to muster.⁵ If the number is too low, minority groups by surprise moves can elect their nominees so easily that no continuity of management can be assured. If the number is too great, the incumbent directors can usually perpetuate themselves in office, since statutes in virtually all states provide that directors hold office until their successors are elected and qualified.⁶ Faced with this problem,⁷ state legislatures have formulated diverse requirements governing corporate elections.

3. Under a cumulative voting system a stockholder is given the right to cast votes equal in number to the share vote-units he controls times the number of directors to be elected. These votes he may distribute as he chooses among the candidates for the offices, and the election is valid even though a majority of the directors elected receive the votes of only a minority of the shares. *Chicago Macaroni Mfg. Co. v. Buggiano*, 202 Ill. 312, 67 N.E. 17 (1903).

To avoid the possibility that the cumulative voting privilege will be exercised unexpectedly to capture an election, most states require that notice be given before it is exercised. MINN. STAT. § 7492-25 (Mason's 1940 Supp. 1927), see Honshour, *The Minnesota Business Corporation Act*, 17 MINN. L. REV. 689, 702 (1933). As to cumulative voting and how it operates, see 5 FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 2048 (rev. and perm. ed. 1931), and BALLANTINE, CORPORATIONS § 177 (rev. ed. 1946).

4. The average shareholder in the large corporation is primarily interested in financial return; when apprehensive of the management's future course, he sells his stock. Rhorlich, *Corporate Voting: Majority Control*, 7 ST. JOHN'S L. REV. 218 (1933). Federal statutes do require the larger corporations to furnish a variety of information in the proxy statement as to the purpose of the solicitation, e.g., § 14(a) of the Securities Exchange Act of 1934, 48 STAT. 895 (1934), 15 U.S.C. § 78n (1946); § 12(e) of the Public Utility Holding Company Act of 1935, 49 STAT. 824 (1935), 15 U.S.C. § 79 1(e) (1946); § 20 of the Investment Company Act of 1940, 54 STAT. 822 (1940), 15 U.S.C. § 80a-20 (1946). But the proxy statement is not enough in itself to prod the average shareholder into active participation in corporate affairs. See Vinikoor, *The Securities Exchange Commission and Proxy Regulation*, 21 TEMP. L.Q. 406 (1948); Manahan, *Compliance with S.E.C. Proxy Rules*, 20 SO. CAL. L. REV. 355 (1947).

5. Voting requirements are embodied in the state statutes and the corporation by-laws. To determine the election requirements of a particular corporation, the two must be read in conjunction. See, e.g., *State ex rel. Ross v. Anderson*, 31 Ind. App. 34, 42 (1903). Of the federal acts, only the Investment Companies Act of 1940 specifies the proportion of shares that must be represented at an election meeting or the votes that must be cast to elect. 54 STAT. 813 (1940), 15 U.S.C. § 80a-16(a) (1946); 54 STAT. 799 (1940), 15 U.S.C. § 80a(4) (1946).

6. E.g., COLO. STAT. ANN. c. 41, § 29 (1935); FLA. STAT. ANN. §§ 610.02, 611.16, 612.33 (1943). Some courts have asserted that unless some such provision were made for

Under the common law rule, followed in twelve states and the District of Columbia,⁸ directors may be elected by vote of a majority of the shares balloted at a duly-called election meeting, no matter how small the number of shares represented.⁹ Under this rule it is relatively easy for an active minority group to secure the election of its nominees by secretly gathering its strength while an over-confident majority group rests in false security.¹⁰ Perhaps for this reason, thirty-six jurisdictions have modified the common law rule by statute.¹¹

At the other extreme is the corporation code of South Dakota, which requires that: "All elections of directors must be by ballot and a vote of stockholders representing a majority of the subscribed capital stock or a majority of the members is necessary to a choice."¹² The statute, as yet uninterpreted by the courts, might be construed to mean either that the *winning candidate* must receive the votes of a majority of the outstanding voting shares, or merely that a majority of the outstanding voting shares *must be cast* for the election to be valid. Even by the latter construction the statute imposes more than a mere majority quorum requirement in that the majority must not only be present, but must cast their votes. Thus a minority might defeat a potentially valid election by refraining from voting, where by voting negatively they could not prevent the election of the opposition candidates.

continuance in office of the incumbent board, a dissolution would result should the stockholders fail to effect a valid election on the final day of the term. *See, e.g.*, *Walsh v. State of Alabama ex rel. Cook*, 199 Ala. 123, 125, 74 So. 45, 46 (1917). Others have held that failure to elect does not alone result in a dissolution, but only makes the corporation subject to dissolution by appropriate judicial proceedings. *Trustees of Vernon Soc'y v. Hills*, 6 Cowen 23 (N.Y. 1826); *Cahill and Smith v. The Kalamazoo Mut. Ins. Co.*, 2 Doug. 124 (Mich. 1845).

7. As to non-cumulative voting the problem is two-fold: how many shares must be represented to form a quorum and what vote should be required to elect. Where shares are voted cumulatively, the candidates receiving the greatest number of votes are elected, but the problem remains as to what quorum should be specified.

8. Seven states follow this rule without statutory provision. Five states, however, have codified it. *E.g.*, ARK. STAT. § 64-403 (1947); NEV. LAWS § 1632 (1929). And see D.C. CODE § 29-205 (1946).

9. *E.g.*, *Attorney General v. Davy*, 2 Atk. 212, 26 Eng. Rep. 531 (1741); discussed in Note, 91 SOL. J. 170 (1947). This was the common law rule applicable to a body composed of an indefinite number of individuals. To constitute a legal meeting of a definite-sized body, on the other hand, a majority of the whole body must be present. *See, e.g.*, *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371, 377, 55 N.W. 547, 549 (1893). For cases applying the rule *see* *Eagle Iron Co. v. Colyar*, 156 Fed. 954 (5th Cir. 1907); *Martin v. Chute*, 34 Minn. 135, 24 N.W. 353 (1885). *See* generally, MORAWETZ, *PRIVATE CORPORATIONS* § 354 (2d ed. 1882); 3 COOK, *op. cit. supra* note 1, §§ 607, 608.

10. *See, e.g.*, *Brown v. The Pacific Mail S. S. Co.*, 5 Blatch. 525, 4 Fed. Cas. 421 (1867) (description of extent to which minority group can take advantage of majority stockholders under common law rule).

11. *See* notes 13-7 *infra*.

12. S.D. CODE §§ 11.0701, 11.0711 (1939).

A position midway between the common law and South Dakota extremes has been adopted by five states, the first of which was California.¹³ The corporation codes of these states specify that an election is valid only when a majority of the outstanding voting shares *are represented*, but that candidates receiving the highest number of votes cast by this quorum shall be elected.¹⁴ Such statutes make it more difficult than does the common law rule for a minority group to secure the election of its nominees, yet do not expose the corporation to as great a danger of self-perpetuation by directors as does the South Dakota rule.

On the theory that quorum and vote requirements should vary according to corporate needs, however, most states have rejected the specificity of statutory requirements, preferring to grant varying degrees of discretion to the corporation. Some limit corporate choice to a determination of the quorum necessary to hold an election meeting.¹⁵ A large number, however, grant discretion both as to quorum and vote requirements.¹⁶ Under all of these statutes there is the possibility that a corporation will adopt undesirable election rules, going either to the common law or South Dakota extremes.

The immediacy of this possibility is evidenced by *Standard Power & Light Corp. v. Investment Associates, Inc.*,¹⁷ in which a charter requirement similar to the South Dakota statute was involved. In accordance with the statute

13. CAL. CODE, CORPS. § 2211 (Deering 1947).

14. The statutes of the five states vary as to the form of the provisions. The California code specifies the size of the quorum; since it does not state the vote required to elect, the common law majority-vote rule applies by implication. CAL. CODE, CORPS. § 2211 (Deering 1947). The North Dakota code includes the same provision but makes an exception for corporations with less than \$10,000 capitalization, permitting them to establish their quorum requirements in by-laws. N.D. REV. CODE §§ 10-0511, 10-0512 (1943). The Wyoming and North Carolina statutes specify both the size of the quorum and vote necessary to elect. WYO. COMP. STAT. § 44-114 (1945); N.C. CODE § 55.112 (1939).

15. These statutes vary greatly in the degree of discretion given to the corporations to determine the size of the quorum. *E.g.*, MONT. REV. CODE § 5931 (1935) (quorum as by-laws specify); N.M. STAT. §§ 54-403, 54-404 (1941) (quorum as by-laws specify, but not to exceed a majority of voting shares); MASS. GEN. LAWS c. 156, §§ 13, 28 (1932) (quorum of majority of voting shares unless by-laws specify otherwise); N.J. STAT. ANN. §§ 14.10-9, 14.10-13 (1939) (quorum of majority of voting shares unless by-laws specify a lesser number); ILL. ANN. STAT. c. 32, § 157.31 (1941) (quorum of majority of voting shares unless by-laws specify otherwise, but in no case less than one-third).

Under all of these statutes, the vote necessary for election is a majority of those present, either by specific provision or by tacit incorporation of the common law rule.

16. *E.g.*, N.H. REV. LAWS c. 274, § 4 (1942), and ME. REV. STAT. c. 49, § 22 (1942) (complete discretion as to vote and quorum); MINN. STAT. §§ 7492-4, 7492-27 (Mason's 1940 Supp. 1927), and MICH. STAT. ANN. §§ 21.13, 21.38 (1935) (quorum of majority of voting shares unless by-laws specify otherwise; vote to elect determined in by-laws); UTAH CODE ANN. § 18-2-42 (1943), and MD. ANN. CODE art. 23, § 20 (1939) (quorum of majority of voting shares unless by-laws specify otherwise; majority of votes cast elects unless by-laws specify otherwise).

17. 51 A.2d 572 (Del. 1947).

of Delaware permitting the individual corporation to determine the vote required to elect its directors,¹⁸ Standard Power and Light Corporation had adopted articles of incorporation which declared: "The holders of the Common Stock Series B shall have the right by vote of a majority in number of shares of the Common Stock Series B issued and outstanding to elect a minority in number of the full Board of Directors of the Corporation."¹⁹ At a duly-called meeting for election of Class B directors where a majority of the voting shares were represented, nominees of a group of stockholders opposing the incumbent directors received the vote of a majority of the ballots cast but not of all outstanding voting shares.²⁰ Following a dispute as to the validity of the election, their stockholder supporters brought suit²¹ to determine whether these candidates should assume office or whether the incumbent directors should retain their positions until an election wherein some nominees received the vote of a majority of the outstanding voting stock.²²

Concluding that the phrase "vote of a majority in number of shares . . . issued and outstanding" was ambiguous, the court interpreted the articles as permitting election where a majority of the outstanding shares are balloted at the meeting though a majority of the outstanding shares are not voted for any one candidate. This interpretation was adopted by the court as more consonant with "well established principles of fairness and reasonableness."²³ Aware that many shareholders normally fail to cast their

18. DEL. REV. CODE §§ 2037, s.s. 11, § 2049 (1935).

19. Article Fourth, quoted in *Standard Power & Light Corp. v. Investment Associates, Inc.*, 51 A.2d 572, 574 (Del. 1947). This article also provided that Class A directors (who comprised a majority of the board) should be elected by Class A shareholders under the same procedure, though apparently no difficulty had arisen as to their election. The provision is unusual and is not in accordance with the Delaware standard form. See 1 FLETCHER, CORPORATE FORMS AND PRECEDENTS ANNOTATED §§ 215, 1210 (3rd and rev. ed. 1938).

20. At the time of the 1946 election, there were 110,000 shares of common stock Series B outstanding. Of these shares the opposition nominees gained 42,519 votes as against 40,828 votes for the nominees of the management. *Standard Power & Light Corp. v. Investment Associates, Inc.*, 51 A.2d 572, 574 (Del. 1947).

21. In the absence of statute a court of equity has no power to take jurisdiction for the purpose of determining the legality of shareholder elections. *Fleer v. Frank Fleer Corp.*, 14 Del. Ch. 277, 125 Atl. 411 (1924). The statutes of Delaware, however, confer this power on the court of chancery. DEL. REV. CODE § 2063 (1935).

22. The incumbent directors had been elected originally in 1944 at the annual stockholders' meeting. At the 1945 meeting, management was unable to secure the presence of a quorum of the outstanding Series B stock. Because of the inability of those present to elect directors, the meeting was adjourned from time to time, and finally adjourned *sine die*. *Standard Power & Light Corp. v. Investment Associates, Inc.*, 51 A.2d 572, 577 (Del. 1947).

23. The lower court reasoned that if this interpretation were adopted, an election would almost always result. *Investment Associates, Inc. v. Standard Power & Light Corp.*, 48 A.2d 501, 507 (Del. Ch. 1946). Once there is a quorum, a minority cannot prevent a valid election by withdrawal. *Hexter v. Columbia Baking Co.*, 16 Del. Ch. 248, 145 Atl.

ballots,²⁴ the court argued that to require a majority of all outstanding stock for election would unduly favor incumbent directors.²⁵ Though the court thus allowed the election of new directors in this instance, the interpretation which it adopted also may permit invalidation of future elections, as under the South Dakota statute, by strategic withdrawals of the minority opposition reducing the number of votes cast below a majority of all outstanding shares.

Apparently anticipating that corporations might adopt election procedures which would make election of insurgent candidates difficult, the Delaware legislature has provided safeguards in its corporation code against a management's attempted self-perpetuation in office. Thus there are provisions requiring annual elections and limiting directors' terms of office to a maximum of three years.²⁶ Directors are to retain office under this section until their successors are elected and qualified which may be indefinitely in the absence of a valid election,²⁷ but such an eventuality is unlikely in view of the statutory provision for special elections.²⁸ The corporation code empowers the chancellor to hold meetings on the application of the holder of even one share of voting stock when directors fail to call an election or when an election is held but no candidate receives the prescribed number of votes. At this second meeting, election of directors is assured, since the statute permits disregard of charter requirements and specifies that those present shall constitute a quorum.²⁹

115 (1929); Commonwealth *ex rel.* Sheip v. Vandergrift, 232 Pa. St. 53, 81 Atl. 153 (1911). See generally, 5 FLETCHER, *op. cit.* *supra* note 3, § 2020. The lower court evidently did not consider the effect of a failure of a minority opposition to vote.

The language of Chancellor Wolcott in *Duffey v. Loft, Inc.*, 17 Del. Ch. 140, 148, 151 Atl. 223, 227 (1930), quoted by the court in the instant case, almost amounts to an admission that the court had strained the wording of the articles to arrive at its decision: "The duty to hold such [an annual] meeting and to elect directors thereat is one that is laid by the statute. So important is the direction that this duty be performed that in some instances courts have brushed aside all strictness and technicality of view in the interest of securing a statutorily commanded election, or, if one has been held, of sustaining its results. . . . [W]here an extensive campaign has been carried on by rival groups for the votes of stockholders and arguments pro and con have been made, the parties interested should submit to a count and let the majority prevail." 51 A.2d 572, 577 (Del. 1947).

24. In the lower court opinion, the chancellor declared that he took judicial notice of the fact that under the most favorable circumstances many shareholders would not take the trouble to vote. 48 A.2d 501, 507 (Del. Ch. 1946). The Supreme Court opinion, however, did not explicitly discuss this possibility.

25. See note 6 *supra* and DEL. REV. CODE §§ 2041, 2062 (1935).

26. DEL. REV. CODE § 2041 (1935). The section provides that the corporation may in its articles of incorporation divide the board of directors into one, two, or three classes, each class to serve terms equal in length, and at least one class to be elected annually.

27. See note 10 *supra*.

28. DEL. REV. CODE § 2063 (1935).

29. It might be argued that by-law vote requirements must be respected at special elections, since the statute is silent as to them though it specifically permits disregard of by-law quorum provisions. It seems highly improbable that the legislature had this intent, how-

Since the possibility of self-perpetuation by directors may arise in all states which have granted discretion to corporations in determining the manner of electing directors, the codes of these states all include some safeguard similar to the Delaware provision for a special election. Some of these provide flatly that where directors are not successfully elected at the meeting called for in the by-laws a subsequent meeting shall be held, at which those in attendance will constitute a quorum and nominees receiving a simple majority of the votes cast will be elected.³² Other statutes allow shareholders possessing a stated minimum percentage of the voting stock to call a second meeting at which a majority of the shares voted is sufficient to elect directors.³¹

This type of safeguard does not appear altogether satisfactory.³² Special election procedures may not be effective, for under some statutes it may be difficult to secure representation of the percentage of stock necessary to call an election, and added delay may result if nullified on a technicality of improper call³³ or notice.³⁴ And if they are effective, they place a stringent limitation on the grant of discretion, in that the vote and quorum requirements desired by the corporation are by-passed when not satisfied by the first election.

As a further safeguard, some legislatures specifically withhold from di-

ever, for under that scheme there might be sufficient shares represented to hold an election meeting, yet insufficient shares to carry out the single purpose for which the members assembled.

30. *E.g.*, IDA. CODE § 29-135 (1932); LA. GEN. STAT. § 1111 (1939); discussed in Bennett, *Louisiana Corporation Act*, 2 LA. L. REV. 597, 628 (1940).

31. *E.g.*, DEL. REV. CODE § 2063 (1935); NEB. REV. STAT. § 21-170 (1943); *In re Jackson*, 9 Del. Ch. 279, 81 Atl. 992 (1911); *Bridges v. Staton*, 150 N.C. 216, 63 S. E. 592 (1909); see Note, 2 A.L.R. 558 (1919).

32. Especially unsatisfactory from the viewpoint of securing elections are the statutes which provide no less stringent vote and quorum requirements for special elections than those provided for regular elections. MINN. STAT. 7492-24 Mason's 1940 Supp. 1927; N.J. ANN. STAT. § 14: 10-2 (1939).

33. It is usually essential to the validity of acts done at a special meeting that the call be made by the person or persons designated by the governing statute or by-law. *State v. Pettineli*, 10 Nev. 141 (1875) (where by-laws commanded call by trustees, meeting called by president held invalid); *Reilly v. Ogleby*, 25 W.Va. 36 (1884) (where statute demanded call by stockholders, call by the secretary on authority of the stockholders was insufficient); *Grant v. Elder*, 64 Colo. 104, 170 Pac. 193 (1917) (where statute provided for call by two directors, an election held on call of president was invalid). See generally, 3 COOR, *op. cit. supra* note 1, c. XXXVI.

34. An attempted election at a special shareholders' meeting will be invalid if the notice does not specify that the meeting is to elect directors. Mere notice that the purpose is to transact such business as may come before the meeting is insufficient. See Note, 51 A.L.R. 941, 957 (1927). Stockholders who attend but do not vote are held not to have waived their right to object to the improper notice though they do waive their right by voting, *Dolbear v. Wilkinson*, 172 Cal. 366, 156 Pac. 488 (1916). Nor does it matter that the result would have been the same had notice been proper. *Re Keller*, 116 App. Div. 58, 101 N.Y. Supp. 133 (1906).

rectors the right to modify voting requirements established by the charter or the by-laws.³⁵ Even in the absence of such statutory provisions, courts hold that legislation giving corporations the "power to make by-laws not inconsistent with law or the articles of incorporation" does not authorize directors to pass by-laws affecting their classification or term of office.³⁶ And where legislatures have vested the power to enact by-laws in the shareholders, with permission to the shareholders to delegate that power to directors,³⁷ courts have similarly held that the delegation cannot include a power in the directors to pass by-laws affecting their own qualification, manner of election, or term of office.³⁸ But while this rule obviates the possibility of one method of self-perpetuation, it does not solve the generic problem.

Thus the secondary controls adopted to restrict the broad discretion granted by many states do not provide an adequate substitute for specificity in the statute itself. A more effective means of insuring fair elections appears to be enactment of specific regulatory statutes like that adopted by California. Continuity of management can thus be protected against surprise election maneuvers by small minorities, and yet opposition to an unpopular board of directors need not hurdle the often insuperable obstacle of mustering a clear majority of all outstanding shares.

35. *E.g.*, MICH. STAT. ANN. § 21.16 (1935); WASH. REV. STAT. § 3803-26 (1931); MINN. STAT. § 7492-23 (1927). On the other hand the Louisiana Code specifically confers the power on directors, though the by-laws may be repealed by the shareholders. LA. GEN. STAT. § 1109 (1939), discussed in Bennett, *Louisiana Corporation Act*, 2 LA. L. REV. 597, 627 (1940).

36. *E.g.*, UTAH CODE ANN. tit. 18, § 2, s.s. 16 (1943); ILL. ANN. STAT. c. 32 § 157.25; see *Stevens v. Davidson*, 59 Va. 819 (1868); 8 FLETCHER, *op. cit. supra* note 3, § 4178. But see Ayer, *The New Washington Business Corporation Act*, 8 WASH. U. L. REV. 147, 154 (1934) stating that the Washington statute containing such provision was amended because under it the directors might have been able to alter by-laws affecting their office. WASH. REV. STAT. § 389 (1931).

37. The statutes vary considerably in detail. *E.g.*, W. VA. CODE § 3031 (1943) and TEX. ANN. STAT. § 1326 (1933) (directors granted power to amend by-laws subject to shareholders right to amend); IND. STAT. ANN. § 25.206 (1933) (power in directors unless charter vests it in shareholders); VA. CODE § 3787 (1942) and S.D. CODE § 11.0603 (1939) (power in shareholders who may confer it on directors subject to a power of repeal reserved to themselves).

38. See, *e.g.*, *Curtis v. McCullogh*, 3 Nev. 202 (1867); under these statutes directors may postpone the holding of scheduled elections for a short period. *Baker v. National Life Ass'n*, 183 Ia. 966, 166 N.W. 596 (1918). However, they cannot so change the holding of elections as to have the effect of continuing themselves in office against the will of the shareholders. *Walsh v. Alabama ex rel. Cook*, 199 Ala. 123, 74 So. 45 (1917); *State ex rel. Carpenter v. Kreutzer*, 100 Ohio St. 246, 126 N.E. 54 (1919). On the power of directors to pass by-laws generally, see 2 THOMPSON, *op. cit. supra* note 1, §§ 1059, 1069-71.